

**Letter of Findings Number: 08-0665P  
Withholding Tax-Penalty  
For the Period Ending December 31, 2007**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty for failure to remit employee withholding tax in a timely manner.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. During the period in question, Taxpayer did not remit withholding tax with respect to the employees at one of Taxpayer's Indiana locations. The Department assessed interest and a ten-percent penalty with respect to the late payment. Taxpayer protested the penalty and interest.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit employee withholding tax on behalf of its employees.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer protests that its payroll service incorrectly set up the account with regard to one of Taxpayer's Indiana locations. Taxpayer argues that the fact that it hired a professional payroll service to remit taxes of its behalf demonstrated reasonable care. In addition, Taxpayer asserts that the untimely filing was the result of human error. However, the hiring of an agent to perform acts on behalf of a taxpayer does not demonstrate reasonable cause for failure to perform such acts. Furthermore, the argument that the failure to remit was based on "human error" does not demonstrate reasonable cause necessary to justify penalty waiver. Taxpayer has presented no other legal or factual grounds to justify penalty waiver.

Taxpayer also protests the imposition of interest. Under IC § 6-8.1-10-1(e), interest cannot be waived.

**FINDING**

Taxpayer's protest is denied.

*Posted: 04/29/2009 by Legislative Services Agency*

